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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BG/LSC/2013/0406**

Property : **110A – 116C Fairfoot Road, 1 – 3
Spanby Road & 201A – 201D
Swatton Road, Bow, London E3
4EW**

Applicant : **Southern Housing Group**

Representative : **Ms Rosalind Ugwu Regional
Operations Manager
Mr Ashley Parette Leasehold
Manager**

Respondent : **Mr Pagonis of 201D Swatton Road
and various other lessees**

Representative : **Written representations were made
by Mr Pagonis on his own behalf**

Type of Application : **For the determination of the
liability to pay a service charge**

Tribunal Members : **Mr S Carrott LLB
Mr T N Johnson FRICS**

Date of Application : **6 June 2013**

**Date of consideration
and Decision** : **15 August 2013**

DECISION

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”).
2. Although the Applicant has provided the Tribunal with its own estimate of the costs of the contemplated works, no quotations or schedule of works have been provided, no notices have been served pursuant to section 20 of the 1985 Act and so this determination is limited in scope, to whether the cost of building works to 110A – 116C Fairfoot Road, 1 – 3 Spanby Road & 201A – 201D Swatton Road, Bow, London E3 4E for the purposes of crime prevention are payable as a service charge under the terms of the lease.
3. This determination does not deal with the reasonableness of the estimated cost of those works.
4. The single tenant who has responded to this application, Mr Pagonis of 201D Swatton Road and who opposes this application has also made an application under section 20c of the Act to limit the landlord’s costs of this application. He has consented to this application being considered on the papers without an oral hearing.

The background

5. The Applicant is as housing association and the landlord of the subject properties. The Application states that the Applicant would like a determination of the recoverability of the cost of repairs and maintenance and improvement works to the block following the recommendations of the Police Crime Prevention Team.
6. The Tribunal has not been provided with any report but has been informed that the works contemplated comprise the replacing of a communal door and associated building works to widen the opening, applying anti-climbing paint and putting in required signage, replacing an external wooden gate with a metal bar gate and installing a trellis along external wall.
7. Unfortunately the tenants were not informed of these proposed works before the application was made to the Tribunal and that may explain why only one tenant, Mr Pagonis has responded.
8. Mr Pagnosis holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

9. His argument is simply that the costs are unreasonable.
10. Neither party made any submissions as to whether or not the contemplated costs were recoverable under the terms of the lease.
11. The Tribunal has been provided with a copy of the lease which is in common form.

The tribunal's decision

12. The tribunal determines that the cost of building works, namely the replacing of a communal door and associated building works to widen the opening, applying anti-climbing paint and putting in required signage, replacing an external wooden gate with a metal bar gate and installing a trellis along external wall to 110A – 116C Fairfoot Road, 1 – 3 Spanby Road & 201A – 201D Swatton Road, Bow, London E3 4E are recoverable under the terms of a the lease as a service charge and such service charge is payable by the Respondents to the Applicant.
13. This decision does not prejudice the rights of the Respondents to challenge the reasonableness of the cost of the above works.
14. The Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charges
15. The Applicant is not entitled to be reimbursed with the fees in connection with this application.

Reasons for the tribunal's decision

16. Clause 5(3) of the lease provides that the landlord shall maintain repair and decorate and renew (amongst other things) the doors on the outside of the flats within the building and the common parts.
17. Clause 6(4) provides that the landlord shall have power at its discretion to alter or permit the alteration of the arrangement of the common parts provided that after such alteration the access to and amenities of the premises are not substantially less convenient than before.
18. Clause 7(5) of the lease provides that the relevant expenditure to be included in the service provision shall comprise all expenditure reasonably incurred by the landlord in connection with the repair, management, maintenance and provision of services for the building and the common parts.

19. The Tribunal concluded on the basis of the works proposed, that the cost of such works would fall within the definition of expenditure reasonably incurred by the landlord in connection with the management, maintenance and provision of services for the building and common parts notwithstanding the works in part consisted of improvements.
20. In reaching this decision the Tribunal considered not only the provisions of the lease referred to above but construed provisions of the lease as a whole.
21. Since the Applicant had not provided quotations for the proposed works and in particular had not disclosed the crime prevention report, the Tribunal determined that it was not possible to make any determination as to the reasonableness of the estimated costs of the work.

Application under s.20C and refund of fees

22. The Respondent applied for an order under section 20C of the 1985 Act. The Applicant indicated at the pre-trial review that it would not in any event pass on the costs of this application through the service charges. Bearing in mind that the Respondents were not informed of the proposed works before this application was made and that the Applicant had previously indicated that it would not seek to recover its costs the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charges.
23. Likewise there will be no refund of fees.

Name: S Carrott LLB

Date: 15 August 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

- proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.